

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2155 of 1997

with

SPECIAL CIVIL APPLICATION No 2760 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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NAGARBHAI PASABHAI BHANGI

Versus

S A GOLAKIYA

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Appearance:

1. Special Civil Application No. 2155 of 1997
MR BS PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2
2. Special Civil Application No 2760 of 1997
MR SR SHAH for Petitioner
MR MD PANDYA for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 15/09/97

ORAL JUDGEMENT

This matter was called out twice in the morning and nobody was present for the petitioner. Nobody is present in the afternoon also. In this matter way back it had been made clear to the petitioners on 7.8.1997 that when the matter is subsequently taken up, it will be heard finally.

2 The petitioner herein submitted a scheme under section 21 of the Urban Land (Ceiling & Regulation) Act, 1976, for land admeasuring 22,906 square meters situated at village Sama in the urban agglomeration of Vadodara. That scheme was sanctioned. It was however noticed that the petitioner had committed breach of number of conditions, namely, (i) he was required to keep 30% of the tenaments vacant until he heard from the Government and then only admit the members for them (condition no.23); (ii) he was to obtain occupancy certificate before putting anybody into possession (condition no.11); (iii) he was to sell the tenaments at the specified price only (condition no.12); (iv) he was to construct the houses of the specified sizes only as per the sanctioned plan (condition no.19); (v) he has to make the list of allottees available to the government; and (vi) a complaint was also received in writing from one Mr Chauhan specifically alleging that an amount of Rs.24,000 was taken in excess from him.

3 It was found that the petitioner inducted occupants without informing the Government, without obtaining the occupancy certificate by taking more price and by constructing the houses of the larger size. In this view of the matter, an inquiry was held and the competent authority cancelled the permission and declared the concerned land to be vacant by its order dated 12th May 1995.

4 The appeal was preferred therefrom and the same also came to be dismissed by the order dated 10th September 1995. A petition was filed in this court challenging both the order. Rule was issued by another single judge (RR Jain, J.) on 7th April 1997 granting status quo in terms prayer clause 8(B).

5 Mr Bukhari, learned AGP, from the official record

brought it to the notice of the learned judge on 5.5.1997 as to how various breaches have been committed by the petitioners. The learned judge tagged this matter along with another petition being SCA No.2760 of 1997 to decide what should be the interim compensation to be paid by the petitioner in such a situation by his order dated 5.5.1997. It however so transpired that the said petition got disposed of independently. This petition subsequently reached before me. As stated by me earlier on 7th August 1997 it was made clear that as and when the matter reached for hearing it was to be heard finally.

6 Today when the matter reached before me, Mr Bukhari has pointed out that whereas in all 265 dwelling units were to be constructed as per the subsequent application of the petitioner filed in 16th August 1994, 253 had been occupied in the meanwhile. This was all done without obtaining the clearance of that scheme as also without obtaining occupancy certificate after the work was completed.

7 As far as the allegation of Mr Chauhan being required to pay 25% extra is concerned, there is an implied admission in paragraph 3.2 of the petition wherein it is stated that the developer immediately returned back the amount received from Mr Chauhan. This is only tip of the iceberg and it is submitted that similar payments might have been received from other occupants as well though nothing can be stated as of now in the absence of any material on record. Other breaches as held to be proved by the competent authority are glaring enough and there is no defence with respect thereto. In that view of the matter, there is no reason to entertain such a petition any further. The petition is therefore dismissed. The order of status quo granted earlier will stand vacated. RULE is discharged.

8 In view of this position, the respondents will be at liberty to take further steps under the Act including issuing the notification vesting the land in the government. Immediately on issuing the necessary notification the respondents will put up a Board on the concerned property informing the public at large that it vests with the Government. The respondents will also put up their seals on the 12 tenements which are presently unoccupied so as to protect them.
